

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Fremont, California)

OFFICE DEPOT, INC.

Employer

and

Case 32-RC-4627

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL UNION NO. 70, AFL-CIO**

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

The Employer, a Delaware Corporation with its headquarters located in Del Ray Beach, California, is engaged nationwide in the business of the retail and non-retail sale of office supplies, products and furniture. The Petitioner seeks to represent a unit of approximately 178 truck drivers, assistant drivers and helpers¹ at the Employer's Fremont, California Customer Service Center (herein referred to as CSC) only. The Employer contends the unit sought by Petitioner is not appropriate, that the most appropriate unit would include all warehouse, driver, assistant driver and lead driver employees at the Fremont CSC and its satellite facilities located in Red Bluff, Stockton, Sacramento, Fresno and Santa Rosa, California and Sparks, Nevada. In the alternative, the Employer contends that a less comprehensive unit comprised of all production, warehouse, shipping and receiving, maintenance, driver, assistant driver and plant clerical employees working at the CSC is also an appropriate unit. The Petitioner is unwilling to proceed to an election in any unit other than the petitioned for unit. There is no history of collective bargaining between the parties or at the CSC.

The CSC, in essence a distribution center, opened in March, 1998, is a 375,000 square foot facility, one of the Employer's two "mega-warehouses" in the United States and is part of the non-retail Business Services Division (herein called BSD) of the Employer which provides goods to primarily non-retail national accounts² as well as to certain retail customers obtained through the Employer's telephone centers and through the Internet.

The CSC and its satellites are operated in a "hub and spoke" fashion in that the CSC is the source of all inventory delivered to each of the satellites. The Employer has a policy of delivering any order received on the following day to the customer; its so-called 24 hour rule. Goods are received at the CSC from vendors by common carrier and ultimately delivered either (A) by common carrier from CSC to the satellites, from which the Employer's local drivers who work out of the satellites then deliver them to the customer or, (B) from the CSC directly to "local" customers in the Employer's own trucks driven by the petitioned for drivers accompanied by a helper who work out of the CSC. The Employer's nationwide driver job classification is Driver Service Representative (herein called DSR). The "local" area serviced directly by DSRs who work out of the CSC runs geographically down the San Francisco peninsula from San Francisco south to Salinas, to the northeast from Fremont to Vallejo and Fairfield to the east, along

¹ At the hearing Petitioner amended its petition to reflect that it is seeking to represent assistant drivers and helpers "who ride on the trucks and assist with deliveries" and that "To the extent that assistant drivers and helpers include classifications of employees who only load trucks, and do not ride on trucks or assist with deliveries, the Petitioner would exclude them from the unit" (TR 508).

² The Employer's retail facilities in northern California are serviced by separate warehouses, the primary one located in Tracy, California.

the East 14th and Mission Boulevard corridor down toward Milpitas, and to the west, to the Pacific Ocean. In addition to the petitioned for 178 drivers and assistants who work out of the CSC, there are 214 “day production” employees, 221 “nite production”³ employees and 45 loading associates.

I take administrative notice of the following distances and driving times between the CSC and its satellites and between the various satellites, which information was obtained on the Internet at www.mapquest.com: CSC to Red Bluff; 206.8 miles (3 hours 47 minutes); CSC to Stockton; 60.8 miles (1 hour 19 minutes); CSC to Sacramento 103.7 miles (1 hour 53 minutes); CSC to Fresno 174.1 miles (3 hours 52 minutes); CSC to Sparks 237 miles (4 hours 18 minutes); CSC to Santa Rosa 96.2 miles (2 hours 11 minutes). Sacramento is 135.4 miles (2 hours 28 minutes) from Sparks and 47.5 miles (1 hour) from Stockton; Stockton is 151.5 miles (3 hours 23 minutes) from Fresno; Red Bluff is 134.1 (2 hours 28 minutes) from Sacramento; and Santa Rosa is 91 miles (2 hours 6 minutes) from Sacramento.

There are approximately 32 employees in Red Bluff, 20 in Sacramento, 9 in Sparks, 15 in Stockton, 25 in Santa Rosa and 49 in Fresno. Each satellite facility has its own manager who reports directly to Nick Candea, the Senior Transportation Manager, located at the CSC.

The parties stipulated that all grievance and termination forms and standards were developed at the Del Ray headquarters and are the same forms and standards used throughout the company at all facilities including the CSC and its satellites. In addition, I take administrative notice of the Board’s recent decision in *Office Depot, Inc.*⁴ and the underlying representation decision upon which that decision is based,⁵ as well as the instant record, for a description of the Employer’s nationwide policies and procedures.

The CSC, as noted above, is a part of the Employer’s Business Services Division (BSD) comprised of twenty customer service centers and their satellites around the United States. The CSC’s Facility Director is Steve Roller who reports to Wally Gustafson, Vice President of the West Coast Region,⁶ who in

³ These terms are reflected in the Employer’s Operations Organization Chart (ER Exhibit 2) but are not job classification titles.

⁴ 325 NLRB No. 139 (May 12, 1998) enf. Sixth Circuit – July 2, 1999.

⁵ *Office Depot, Inc.*, Case 4-RC-19192, Decision and Direction of Election.

⁶ The Employer’s BSD is divided into 5 Regions, Northeast, Southeast, Midwest, Central and West Coast.

turn reports to Senior Vice President Ron Weissman, who reports to President John Macatee, who reports to Chairman Dave Fuente. The above chain of command reflects what the Employer characterizes as the "operations organization" which is a separate structural hierarchy from the "human resources" organization of the BSD. Pete Roberts, Director of Human Resources, Warehouse Operations, located in Del Ray, Florida is responsible for all human resources policies, systems, programs and procedures for all the Employer's "warehouse operations" in the United States. He reports to Tom Pitts, Vice President of Human Resources who reports to Tom Kroeger, Executive Vice President of Human Resources who reports to President Macatee. The Human Resources manager for the West Coast Division is Tom Reim. Reporting to Mr. Reim are two senior human resource representatives, Gabrielle Merritt in Northern California, who works at the CSC and Jane Shepoiser who works in Southern California.

The Employer's national policies regarding wages, benefits and personnel matters are developed by its Human Relations Department described above. The Employer has established five pay bands nationwide, "Band A" through "Band E" and the starting, intermediate and top rates of pay within those bands are determined at corporate headquarters. The rates of pay in any particular geographic area are additionally determined, again at corporate headquarters, by what the local labor market factors are, with the five pay bands then accordingly being adjusted in five percent increments. The CSC is in the 115% market, the Fresno satellite is in the 100% market. At the SCS, DSR's, along with lead furniture associates, lead warehouse associates, installation associates, lead mechanics, maintenance associates, and customer service dispatchers are in the Band D pay band, while lead DSRs and lead installers are in Band E. DSR assistants on the other hand are in Band C, along with warehouse associates, furniture associates and office associates and equipment operators.

The Employer's People Manual, applicable nationwide, details the Employer's personnel policies including, inter alia, fringe benefit, hiring, profit sharing, merit increase and attendance procedures. All employees are required to take a pre-employment drug test. There is a separate CSR manual detailing delivery procedures and rules of conduct.

The CSRs must have an ordinary drivers license and, in order to comply with Department of Transportation requirements, their driving records are reviewed and they are subject to a physical examination. The Employer has a company policy of promoting from within and jobs are posted for bid at the various facilities.

The CSC operates on a 24 hour a day basis. Goods arrive at the receiving dock by common carrier and are unloaded by the Employer's employees onto the receiving dock. The bills of lading and packing slip for the goods is taken to the office area within the receiving dock where computer

terminal operators, herein called CTOs, take the paperwork and match it via computer with a purchase order. Once the match is made, location tickets are printed and matched with the goods that were just shipped in and a label is affixed to the box or pallet. The goods are then available for “put away”, the function in which the received goods are moved from the receiving dock to storage areas throughout the facility. When a customer order comes in, a “pick ticket” for the order is printed in the production office. Because of the volume of business at the CSC, the pick tickets are printed in batches, with the earlier in the day batches printed for the furthest out satellites. The last batch of pick tickets are those for goods to be shipped by local delivery CSRs. Pick tickets are distributed to picker employees. Pick ticket orders are segregated by format as to whether they are conveyable goods – i.e., goods picked in a split or full case or forms module and hence able to be placed on the CSC conveyor system or are nonconveyable items which need to be picked by handtrucks, pallet jacks and forklifts.

Conveyable items are placed in either small, medium or large boxes, along with the pick ticket and sent to a repackaging station. There items are sent forward as a single box unit or placed in polystyrene bags. The items are then placed on the sortation system of the conveyor which routes the product down to a conveyor spur on the shipping dock. There employees take the products off the conveyor, look at the route number on the box, sort them at the dock for subsequent loading onto either local delivery vans driven by CSRs or for loading onto common carrier trucks which drive goods to the satellites.

Nonconveyable items are delivered by handtruck, pallet jack or forklift directly to the shipping dock.

After product arrives at the shipping dock, it is loaded onto the appropriate trucks. Goods going to the satellites are loaded onto 53 foot trailer trucks owned and driven by common carriers.

Goods for the local routes, delivered in the Employer’s delivery vans by the CSRs are of three types. Furniture goods and bulk items which are delivered on trucks that have liftgates on them, and boxed office supplies delivered in trucks without liftgates.

The paperwork associated with local delivery are invoices which are given the CSRs who sort them to route themselves for the most efficient delivery of their van load of goods that day. The CSRs and their assistants deliver the local goods on their assigned route. At the end of the delivery day, the drivers and their assistants return to the CSC to return the vans, unload any undelivered goods and go through the reconciliation process with their goods, and payment for items delivered. Certain items are returned to stock, including undelivered valuable items returned to a security cage on the shipping dock.

Rick Solis, a furniture CSR at the CSC, testified that his day begins at 4:30 AM when he arrives. He testified that his job duties include organizing his paperwork, checking with his supervisor to see if his assistance is needed in any other area, loading his truck, and if time permits, helping other CSRs load their trucks, then going on deliveries. He estimates he spends 6 ½ - 8 hours on the road ordinarily. If a problem arises with a furniture delivery he usually calls JoSangra, an assistant to Bernie Shirron, the Furniture Transportation Manager, who reports to Nick Candea, the Senior Transportation Manager at the CSC. Mr. Solis testified that at the end of the day he returns to the CSC, turns in his paperwork, unloads undelivered product and for some of those items, has to return them to the area, presumably in the dock area, from which they came that morning. Although Mr. Solis has never worked in the warehouse and has never had a warehouse employee go out on the road with him as his assistant, he is aware of one CSR who helps out in the furniture department assembling furniture when not needed to drive a route.

Depending on whether they are furniture, bulk or stationery drivers, CSRs spend between 1 ¼ - 2 ½ hours in the morning at the CSC, loading their trucks, assembling their paperwork, routing their deliveries for the day and obtaining security items from the security cages. At the end of the business day, CSRs spend 45 minutes to an hour in the reconciliation process, helping the return to stock personnel (RTS) to off-load undelivered goods, and returning certain items to the security cage.

CSRs and CSR assistants work Monday through Friday. CSRs, CSR leads and assistants at the CSC and the satellites are the only CSC employees required to wear uniforms. All CSC and satellite employees are paid hourly and punch a time clock. CSRs and CSR assistants at the CSC use the same breakroom, lockers, restrooms and other facilities as other employees, are paid on the same payday, participate with other CSC employees in the annual inventory, and attend quarterly "All Hands" meetings at the CSC.

At present, based it appears at least in part on the Employer's strong "Hire from Within" policy, approximately 1/3 of the present group of CSRs at the CSC were previously employed in the warehouse section of the facility. In addition, since December 1998, the Employer's established policy has been that individuals are classified as relief CSRs initially and are advised that they can expect that ½ their time will be working in the warehouse area and half driving. The relief CSRs at the CSC report to Transportation Manager Dan Hull, who reports, as do other transportation managers to Senior Transportation Manager Candea. When a CSR temporarily is unable to drive, either because of driving restrictions or a physical ailment, the Employer's policy is to provide work for the individual in the warehouse area of the CSC.

In the recent past, lead CSRs have been promoted to positions in the warehouse, and 53 employees have moved from warehouse to CSR jobs.

The record reflects that day production warehouse employees, who generally start work between 4:00 and 6:00 AM, the same time as the CSRs, often assist the CSRs in loading and unloading their trucks, and on occasion, sometimes once or twice a week, replacements for CSR assistants are obtained from the warehouse. In regards to the relief CSRs, if they are not needed for a particular route on any given day, they are assigned to wherever needed in the warehouse to help with production.

The record further reflects that the return to stock (RTS), 36 employees work regularly with the CSRs and CSR assistants, in that they help them unload their trucks routinely. In addition the record reflects that it is common for the Transportation Department's loading manager Tom David to ask John Lin, Senior Nite Production manager at the CSC for warehouse employee assistance in helping to load the trucks.

Based on all the above, I conclude that the CSRs and assistant drivers and helpers do not constitute a separate appropriate unit of employees. I note first that Petitioner in addition to seeking to represent the CSRs, seeks to represent only those assistant drivers and helpers who ride on the trucks or assist with deliveries, not those who only load the trucks. However, the record reflects, contrary to the Petitioner, that depending on the work load on a given day, a particular assistant or helper may not be needed to go out on a truck, but may be assigned loading or warehouse duties and the record reflects that even employees who ordinarily load the trucks often do assist in deliveries.

The record reflects that CSRs, in addition to their driving duties, work with, or in close proximity to the loading and RTS employees and frequently assist in the performance of non-driving duties. In addition, as much as 3 hours or more of the CSRs work day can be spent at the CSC, where they are in contact with other CSC employees. The record reflects that other job classifications are in the Band C pay band in which assistants fall, and that other CSC job classifications are in Band D, the band in which the CSRs fall. The CSRs and assistants and helpers receive identical benefits with other CSC employees, share the same facilities, work similar hours, are subject to the same disciplinary and evaluation procedures as other employees and work under the general supervision of Nick Candea, Senior Transportation Manager and his immediate subordinates in the Transportation Department. Moreover, I note that the CSRs at the CSC do not all even have the same immediate supervisor in that furniture CSRs report to Bernie Shirron, while relief CSRs report to Dan Hull, and others report to Tony Olivas. There is a significant degree of contact and interchange, including both permanent transfers and frequent temporary interchange between CSRs and particularly their assistants, and other CSC employees.

While a petitioner's desires as to the unit are always a relevant consideration, *Mark's Oxygen Company of Atlanta*, 147 NLRB 228, 230 (1964)

and it is not necessary that a petitioner seek the most appropriate unit, *Overnite Transportation*, 325 NLRB 723 (1996), the petition herein does not seek a unit functionally distinct from other groups of employees at the CSC. In this regard, the instant record reflects much more day-to-day contact between CSRs and their helpers and assistants with other CSC employees than appears was the case in *Office Depot, Inc.*, Case 4-RC-19192 in which a unit of drivers at a customer service center was found appropriate and that unlike that case the petitioned-for unit herein is not an appropriate unit for bargaining. *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). In light of my conclusions herein, I express no view on either of the Employer's alternate arguments as to the smallest appropriate unit.

IT IS HEREBY ORDERED that the petition in this matter be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by August 6, 1999.

Dated at Oakland, California this 23rd day of July, 1999.

/s/ James S. Scott

James S. Scott, Regional Director
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